

## **DRAFT ORDINANCE NO. 2009-XX**

### **AN ORDINANCE OF THE COUNCIL OF THE CITY OF NEVADA CITY AMENDING THE MUNICIPAL CODE BY ADDING CHAPTER xx ESTABLISHING REGULATIONS AND PROCEDURES FOR MEDICAL MARIJUANA DISPENSARIES AND LIMITS GROWING ON MEDICAL MARIJUANA**

THE COUNCIL OF THE CITY OF NEVADA CITY DOES ORDAIN AS FOLLOWS:

#### **Purpose and intent.**

It is the purpose and intent of this Chapter to regulate medical marijuana dispensaries in order to promote the health, safety and general welfare of the residents and businesses within the City in accordance with Article 2.5 (commencing with Section 11362.7) to Chapter 6 Division 10 of the Health and Safety Code, relating to controlled substances.

#### **Definitions.**

For the purpose of this Chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

(a) "Applicant" means an association, collective or cooperative organization that is required to file an application for a permit under this Chapter. Such filing can be made by the organization's managing partner, managing Member, officer, or any other duly authorized manager, employee, or agent of the organization.

(b) "City" means the City of Nevada City.

(c) "City Manager" means the City Manager of the City of Nevada City or the authorized representative thereof.

(d) "Drug paraphernalia" shall have the same definition as California Health and Safety Code Section 11014.5(a)(7) and (8), as amended.

(e) "Excessive Profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility.

(f) "Fire Chief" means Fire Chief of the City of Nevada City or the authorized representative thereof.

(g) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(h) "Medical Cannabis" or "Medical Marijuana" shall include the leaf of the cannabis plant and all products derived from the cannabis plant including, but not limited to, oils, tinctures, butters, candies, lotions, powders, creams, salves and balms, baked goods and any other food products that are subject to inspection by the Nevada County Department of Environmental Health, or other governmental agency responsible for the protection of the consumer food supply through the inspection of retail food service facilities and restaurants.

(i) "Medical Marijuana Dispensary" or "Dispensary" any association, cooperative, affiliation, or collective of persons where multiple qualified patients or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful distribution of medical cannabis. "Dispensary" shall include any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician, and where medical cannabis is made available to

or distributed by or to a primary caregiver or a qualified patient in strict accordance with California Health and Safety Code Section 11362.5 et seq. A Dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations, so long as the location of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code or by applicable state laws.

(j) "Member" means an individual who is a "qualified patient," "a person with an identification," or a "primary caregiver" as those terms are defined below, *and*, if the Permittee is: (1) a partnership, a partner in Permittee; (2) a limited partnership, a general or limited partner in Permittee; (3) a limited liability company, a Member of Permittee; (4) a corporation, a shareholder in Permittee; (5) any other business organization or entity, a holder of a bona fide and equal ownership interest in Permittee.

(k) "Permittee" means the collective or cooperative organization to which a Medical Marijuana Dispensary permit is issued. Permittee shall consist of individuals, each of whom is a "qualified patient," "a person with an identification," or a "primary caregiver" as those terms are defined below.

(l) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above, in whatever form or character.

(m) "Person with an identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(n) "Police Chief" means the Police Chief of the City of Nevada City or the authorized representatives thereof.

(o) "Primary Caregiver" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(p) "Qualified Patient" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(q) "School" means an institution of learning for persons under the age of 18, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education.

#### **Permit required.**

(a) It shall be unlawful for any person, association, collective or cooperative organization to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Nevada City, the operation of a Medical Marijuana Dispensary unless the person, association, collective or cooperative organization first obtains and continues to maintain in full force and effect a conditional use permit for a Medical Marijuana Dispensary from the City of Nevada City as required by this Chapter.

(b) A permit for a Medical Marijuana Dispensary from the City of Nevada City under this Chapter shall only be issued to a collective or cooperative organization comprised of qualified patients and primary caregivers. In no case shall a permit be issued to an individual.

(c) The City Council shall consider and review all applications for a conditional use permit for a Medical Marijuana Dispensary and approve or deny an application in accordance

with this Chapter. All appeals shall be in accordance with Section 17.88.050 of the Nevada City Municipal Code.

**General tax liability.**

(a) The Permittee shall also be required to apply for and obtain a general business license from the City as a prerequisite to obtaining a permit pursuant to the terms hereof, and comply with all requirements for the operation of a Medical Marijuana Dispensary required by the State Board of Equalization and by the City.

**Imposition of fees.**

(a) Every application for a permit or renewal shall be accompanied by a non-refundable fee, as established by the City from time-to-time. This application or renewal fee shall not include fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by the Nevada City Municipal Code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time-to-time.

(b) The City may impose a regulatory fee in connection with the Permittee's operation of the Dispensary under this Chapter. This fee shall be in addition to any application fee, renewal fee, business license fee, fingerprinting, photographing, and background check costs, and shall be payable annually in advance.

**Limitations on number of dispensaries.**

(a) The City shall not grant or cause to be granted more than one permit for a Dispensary.

(b) A permit issued pursuant to this Chapter is not transferable.

(1) If for any reason a permit is revoked or terminated for any reason whatsoever, and such revocation or termination is final, the City will then accept applications for a Dispensary permit in the manner specified in Section \_\_\_\_\_.

**Limitation on location of Dispensary.**

(a) Except as specified in subsection (b), below, no Dispensary shall be permitted or located in any zone in the City.

(b) A Dispensary is restricted to the non-residential zones, within the following areas and as shown on the attached exhibits:

(1) General 7-Hills Business District Business;

(2) General Gold Flat Industrial Park.

(c) No Dispensary shall be within (i) five hundred (500) feet of the property line of a school or park or (ii) two hundred (200) feet from any property line in a residential zone.

(1) The distance between a Dispensary and the school or park shall be measured in a straight line from the building in which the Dispensary is located to the nearest property line of such park or school.

(d) Notwithstanding the provisions of subsections (b) and (c), above, the location of the Dispensary must be approved by the Planning Commission for the use proposed by the Applicant under this Chapter.

## **Limitation on amount of Medical Marijuana**

(a) The Dispensary may not possess more than eight ounces of dried marijuana or more than six mature and twelve immature marijuana plants for each of its qualified patients, persons with an identification card, or Primary Caregivers.

(b) No Qualified Patient, person with an identification card, or Primary Caregiver may cultivate more than six mature and twelve immature marijuana plants at any location in the City.

(1) If a Qualified Patient has a doctor's recommendation that this quantity does not meet the Qualified Patient's medical needs, the Qualified Patient or Primary Caregiver may possess an amount of marijuana consistent with the Qualified Patient's needs.

## **Not-for-Profit**

(a) A Dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible Qualified Patient or person with an identification card, or written recommendation, to enable that person to use marijuana pursuant to California Health and Safety Code Section 11362.7 et seq, or for payment for out-of-pocket expenses incurred in providing such services, or both.

(b) Retail sales of medical cannabis for Excessive Profits are explicitly prohibited.

(c) The Permittee and its Dispensary shall not be operated for a commercial purpose or to make a profit from the sale or distribution of marijuana.

(d) Not later than 30 days after the end of each calendar quarter of each year of the term of its Conditional Use Permit, the Permittee shall provide a report to the City, prepared and signed by a certified public accountant (the "Statement"), stating whether or not the Permittee earned a profit, as determined using generally accepted accounting practices, from its operation of the Dispensary for the calendar quarter immediately preceding the relevant reporting date (the "Reporting Period").

(1) If the Statement shows that the Permittee earned a profit during the Reporting Period, not later than 15 days from its delivery of the Statement, the Permittee shall also provide a detailed statement, in writing and under penalty of perjury, of how Permittee will allocate such profit and that there were no Excess Profits during the Reporting Period.

(i) All allocations shall be for the benefit of not less than all of the Members.

(ii) The Dispensary shall allow the City Manager or his/her designee to have access to the Permittee's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than forty-eight (48) hours after the City Manager or his/her designee's request.

(2) If the City determines that a Statement is incomplete or insufficient in any manner the City, in its reasonable discretion, deems necessary to evaluate Permittee's compliance with this section, the City shall deliver a written notice to Permittee stating the basis for such objections to the Statement and list of the information necessary to satisfy the City. The Permittee shall then have 10 business days to provide the additional requested information to the City.

(3) If the Permittee fails to provide the Statement or any of the additional information as required by sections (b)(1) and (b)(2), and if no extension to submit the information has

been granted by the City, the City may deem such failure(s) to be grounds suspension or revocation the permit under Section \_\_\_\_.

(4) Permittee shall pay all costs incurred by the City, including City staff time, related to the Statement, its evaluation, and any of the additional information as required by sections (b)(1) and (b)(2). The Permittee shall pay such costs within 15 days after the City sends the Permittee an invoice for the amount due.

c. Any unallocated profit earned by Permittee from its operation of the Dispensary in violation of this section shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit under Section \_\_\_\_.

### **Operating requirements.**

The City shall establish regulations governing the operating requirements for any Dispensary in the City. Dispensary operations, including, without limitation, provisions for security and public safety, shall be established and managed only in compliance with such regulations and for the dispensing of medical marijuana as is required pursuant to California Health and Safety Code Section 11362.7 et seq.

### **Application preparation and filing.**

(a) The City will accept applications for a Medical Marijuana Dispensary permit during a forty-five (45) day period commencing on (i) the effective date of this Chapter for the initial permit, or (ii) on the date notice of the permit's availability is given pursuant to Government Code Section \_\_\_\_\_. Such 45-day time period shall be considered the "Application Period."

(b) Submittal Requirements. The City shall establish the information that shall be included on the application.

(c) Application Filing. A complete application in the form required by the City shall be submitted including all necessary fees and all other information and materials required by the City and this Chapter. All applications for permits shall be filed with the City using forms provided by the City. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

(d) Eligibility for Filing. Applications may only be filed by the owner of the subject property, or person with a letter of intent to lease signed by the owner or a duly authorized agent allowing the applicant to occupy the property for the intended use.

(e) Filing Date. The filing date of any application shall be the date when the City receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

(f) Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within ninety (90) days. If the application remains incomplete, in excess of ninety (90) days, the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

(g) Effect of Other Permits or Licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Dispensary permit.

## **Investigation and action on application.**

(a) In recommending the granting or denying of such permit and in granting or denying the same, the City Manager, Planning Commission and City Council shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion they deem necessary to insure the peace and order and welfare of the public.

(b) After the filing of a complete application for a Dispensary permit and payment of the required fees, the Police Chief shall conduct a background check of the applicant and all of its employees, conduct an investigation of the application, and take action as follows:

(1) The application shall be referred to any other City departments as necessary to complete the investigation into the application. This should include, without limitation, the City Manager, the Fire Chief, the Director of Public Works and the City Planner.

(2) Within forty-five (45) days after submission of a completed application, the Police Chief shall provide a written report to the Planning Commission recommending that it (i) deny the application in accordance with the provisions of this Chapter or (ii) approve the application.

(c) The application shall be considered by the Planning Commission at a public hearing noticed and conducted pursuant to the provisions of Section \_\_\_\_\_ of the Nevada City Municipal Code. The Planning Commission shall review the application, the Police Chief's report, and any other information it deems necessary and relevant to its evaluation of the application.

(1) If there is only one application submitted during the Application Period, the Planning Commission shall approve or deny the issuance of a permit to the applicant, subject to full compliance with the provisions of this Chapter and, if approved, any conditions of approval.

(2) If there are two or more applications submitted during the Application Period, the Planning Commission shall rank all applications in order of those that best satisfy the requirements of this Chapter and provide the highest level of service and opportunities for residents of Nevada City. The Planning Commission shall refer the applications, together with its ranking and recommendations, to the City Council for its review, consideration and action.

(3) The applications referred to the City Council by the Planning Commission shall be considered by the City Council at a public hearing noticed and conducted pursuant to the provisions of Section \_\_\_\_\_ of the Nevada City Municipal Code. The City Council shall consider the application(s) after evaluating each such application on its merits and the City Council may conditionally approve any one of them.

(4) The City Council may deny any application if the City Council makes one or more of the findings listed in subsections (4)(i) - (4)(vii), below.

(i) The applicant has made one or more false or misleading statements, or omissions on the application or during the application process; or

(ii) The proposed cooperative or collective is not allowed by state or local law, statute, ordinance, or regulation, including the Nevada City Municipal Code, at a particular location.

(iii) All Members of the applicant are not a Primary Caregiver or Qualified Patient and the legal representative of the cooperative or collective.

(iv) Any person who is managing or is otherwise responsible for the activities of the cooperative or collective, or any employee of it, has been convicted of a felony, or convicted of

a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Compassionate Use Act. A conviction within the meaning of this section means a plea or verdict of guilty or a plea of nolo contendere.

(v) Any person who is managing or is otherwise responsible for the activities of the cooperative or collective has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(vi) The proposed location of the applicant's Dispensary does not meet the requirements of this Chapter.

(vii) The applicant has not satisfied each and every requirement of this Chapter.

(5) If the City Council does not deny all of the applications, then a permit pursuant to this Chapter shall be granted to one of the remaining applications.

#### **Findings for approval of conditional use permit.**

Based on the information set forth in the application, the Police Chief's report, and the Planning Commission's recommendations, the City Council may impose terms and conditions on the proposed operations in addition to those specified in this Section.

The City Council shall make all of the following findings in determining whether to grant a conditional use permit; failure to make all of the required findings shall result in the denial of the permit:

(a) That the Dispensary permit is consistent with the intent of Proposition 215 and related State law, and the provisions of this Chapter and the City Municipal Code;

(b) That the Dispensary location has been approved by the Planning Commission, and that the location is not prohibited by the provisions of this Chapter or any local or State law, statute, rule or regulation and no significant nuisance issues or problems are anticipated or resulted;

(c) That there have not been significant numbers of calls for police service, crimes or arrests in the area;

(d) That the Dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance;

(e) The applicant has agreed to enter into an indemnity agreement, in the form prescribed by the City. The Permittee's obligation under this paragraph shall survive the expiration or any earlier termination of the permit;

(f) The applicant shall obtain and keep in force during the term of the permit a policy of comprehensive public liability insurance insuring the City and the applicant against any liability arising out of the ownership, use, occupancy or maintenance of the Dispensary, which coverage shall not be less than the amount stated in the findings combined single limit per occurrence.

#### **Suspension and revocation: Notice.**

(a) Any permit issued under the terms of this Chapter may be suspended or revoked by the City when it shall appear that the permittee has committed any one or more of the acts or omissions constituting the grounds for suspension or revocation under this Chapter.

(b) No permit shall be revoked or suspended by virtue of this section until a hearing shall have been held by the City Council. Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted at least five (5) days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his address as it appears in his application for a permit.

#### **Suspension and revocation: Grounds.**

It shall be a ground for suspension or revocation of a permit if any permittee or person, his or her agent, or employee:

(a) Does any act which violates any of the grounds set forth in this section, which sets forth the grounds for denial of a permit for the Dispensary; or

(b) Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity; or

(c) Engages in or permits misconduct substantially related to the qualifications, functions or duties of the permittee; or

(d) Conducts the permitted business in a manner contrary to the peace, health, or safety of the public; or

(e) Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business; or

(f) Violates or fails to comply with the terms and conditions of the permit.

#### **Suspension or revocation without hearing.**

If any person holding a permit or acting under the authority of such permit under this article is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City may revoke said permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

#### **Transfer of permits.**

(a) A Permittee shall not operate a Dispensary under the authority of a Medical Marijuana Dispensary permit at any place other than the address of the Dispensary stated in the application for the permit.

(b) A Permittee shall not transfer ownership or control of a Dispensary or transfer a Dispensary permit.

(c) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, of no force or effect, and the permit shall be deemed revoked.

#### **Term of this ordinance.**

Except for this Section and Section (g) under Definitions, defining Medical Marijuana Dispensaries, this Chapter shall remain in effect until March 31, 2011, and as of that date is repealed, unless a later enacted ordinance of the City of Nevada City extends that date. If this Chapter, excluding this Section and the aforementioned section (g), is repealed due to failure of the City extend it, Medical Marijuana Dispensaries shall be prohibited in all Zones.



**Public nuisance.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to Chapter 8.04.010 of the Nevada City Municipal Code.

**Criminal penalties.**

Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.

**Civil injunction.**

The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

**Administrative remedies.**

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance.

**Liability.**

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

**Severability.**

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.



# EXHIBIT 4

## ORDINANCE 2009-06

### AN ORDINANCE ADOPTING AMENDMENTS TO THE ZONING CODE TO IMPLEMENT THE ADOPTION OF THE 2009-2014 HOUSING ELEMENT

THE CITY COUNCIL OF THE CITY OF NEVADA CITY HEREBY ORDAINS AS FOLLOWS:

#### Section One

The City of Nevada City has determined that there are a number of programs within the 2009-2014 Housing Element requiring implementation. These programs involve additions and amendments to Title 17, Zoning of the 2007 Nevada City Municipal Code.

#### Section Two

The following specific amendments are made to Title 17 Zoning Code:

1. Amend Section 17.28.070, Density standards of the R2 zone to establish the density at 8 dwelling units per acre to be consistent with the MF, Mixed Residential General Plan designation. (Exhibit A-1)
2. Establish Chapter 17.30 to create a new R3, High Density Multiple Family Residential Zone to accommodate a maximum of 16 units per acre along with a variety of site development standards to enable project approval through a ministerial review process that is also subject to design review by the Architectural Review Committee. (Exhibit A-2)
3. Establish Section 17.80.210, Divisions to Separate Pre-existing Residences to allow land divisions of existing legal lots with two legal dwellings where the resultant parcels are smaller than the minimum lot size of the zoning district. This measure will require that one of the new lots be subject to a 30-year deed restriction for lower income households. (Exhibit A-3)
4. Add item "L." to Section 17.48.020 of the LI zone to allow emergency shelters as a permitted use in the LI, Light Industrial zoning district and subject to a ministerial review process. (Exhibit A-4)
5. Add Section 17.12.75 Homeless housing facilities to Definitions for Emergency Shelter, Transitional Housing and Supportive Housing. (Exhibit A-4)
6. Add Sections 17.12.82 "Residential care facilities, small" and 17.12.84 "Residential care facilities, large" to Chapter 17.12 Definitions. (Exhibit A-5)
7. Amend Sections 17.16.030, 17.20.030, 17.24.030 and 17.28.030 to allow state licensed, small residential care homes with up to six residents to the AF, RR, R1 and R2 zoning districts consistent with state law requirements. (Exhibit A-6)
8. Add large residential care homes as a use subject to a conditional use permit in Sections 17.16.040 and 17.20.040. (Exhibit A-6)
9. Amend the definition of "Family" (Section 17.12.130) to be consistent with state law. (Exhibit A-7)
10. Amend the definition of Public-Quasi Public (Section 17.12.380) to include emergency shelters, transitional housing supportive housing and state licensed large residential day care facilities. (Exhibit A-8)
11. Amend the definition of single family dwelling (Section 17.12.110) to include manufactured homes as required by state law. (Exhibit A-9)
12. Add Manufactured homes as a Prohibited use to Section 17.68.025. (Exhibit A-9)
13. Amend Section 17.88.040 C, Architectural review, to include applicable architectural requirements for a manufactured home. (Exhibit A-9)

14. Amend Office and Professional (Section 17.32.010 and 17.32.020, Local Business (17.36.010 and 17.36.020), and General Business (17.40.010 and 17.40.020) zones to include mixed use residential uses along with density standards. (Exhibit A-10)
15. Add Section 17.80.210 "Outdoor lighting standards" (Exhibit A-11)
16. Add Section 17.80.220 and 230 to codify and modify the existing Density Bonus Housing and Condominium Conversion Density Bonus provisions previously enacted as Ordinance 90-10. (Exhibit A-12)
17. Add Sections 17.28.020.C to the R2 zoning district to permit transitional and supportive housing as a principal permitted use subject only to the standards applicable to residential uses in the zone (Exhibit A-13)

### **Section Three**

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

### **Section Four**

Ordinance 2009-06, attached is hereby adopted as though set forth in full herein.

**PASSED AND ADOPTED** at a regularly scheduled meeting of the City Council of Nevada City held on this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by the following vote:

This Ordinance shall become effective 30 days after its final adoption, and a copy of this Ordinance shall be published in The Union, a newspaper of general circulation, within fifteen days of the date of its passage.

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

\_\_\_\_\_  
Reinette Senum, Mayor

\_\_\_\_\_  
Neil Locke, City Clerk

**ORDINANCE 2009-07**

**AN ORDINANCE ADOPTING AN AMENDMENT TO THE SUBDIVISION  
REGULATIONS TO IMPLEMENT THE ADOPTION OF THE 2009-2014 HOUSING  
ELEMENT**

THE CITY COUNCIL OF THE CITY OF NEVADA CITY HEREBY ORDAINS AS  
FOLLOWS:

**Section One**

The City of Nevada City has determined that there are a number of programs within the 2009-2014 Housing Element requiring implementation. One of these programs involves an amendment to Section Title 16, Subdivision Regulations of the 2007 Nevada City Municipal Code.

**Section Two:**

The following specific amendment is made to Section 16.04.054, "Limitations on the size of residential units" Title 16 Subdivision Regulations, as follows:

Add the following paragraph after the last sentence of Section 16.04.054, as follows:

Thirty percent of all homes located in new subdivisions shall be 1,500 square feet or smaller. These homes shall be affordable to moderate and below income households. This shall be accomplished through deed restrictions or through an affordable housing plan that includes moderate and below income housing opportunities accomplished through a variety of mechanisms including, but not limited to, size restrictions, rental units, second units, etc. The plan shall be approved by the Planning Commission and/or City Council.

**PASSED AND ADOPTED** at a regularly scheduled meeting of the City Council of Nevada City held on this \_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:

This Ordinance shall become effective 30 days after its final adoption, and a copy of this Ordinance shall be published in The Union, a newspaper of general circulation, within fifteen days of the date of its passage.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Reinette Senum, Mayor

ATTEST:

\_\_\_\_\_  
Niel Locke, City Clerk



**For September 9<sup>th</sup> City Council Meeting Agenda:  
Update of Friends of Deer Creek work with the City of Nevada City**

FODC would like to spend 10 minutes to update our current work with the City and to summarize some of our ideas for future partnerships. We would also like a few minutes to answer questions from the council members about the work. The following are topics we would like to address:

- EPA Brownfields – a summary of what we have done on our assessment will be given at the Sept 23<sup>rd</sup> City Council meeting. Tonight, we would like to discuss possible clean-up at City sites (Providence Mine, Hirschman's Pond, Styles Mill) in the future. Also, we would like to inform everyone that we will be gathering scientists from State, Federal and other agencies to brainstorm cleanup strategies for the City sites on Sept 16<sup>th</sup>.
- FEMA - Update on FEMA grant in Environs.
- Environs Trail Grant – has been signed and approved for funding by California Resources Agency but freeze is still in effect indefinitely.
- Open Space Lands Program – discuss development of a city-FODC partnership
- Storm Drain testing/remediation for heavy metal contamination - discuss applying for federal money for storm drain sediment trapping.





TO: Honorable City Council Members  
FROM: William J. Falconi, City Engineer  
DATE: January 8, 2009  
RE: New Rule 20A, Underground District

**RECOMMENDED ACTION:**

Approve the enclosed standard PG&E Resolution on the next Rule 20A project, and also direct staff to proceed with project.

**BACKGROUND:**

To date, the City of Nevada City has had five under-grounding districts, beginning with Broad Street in 1972 and the last one being the Pine Street Bridge in 1996. Since that time, our underground account has been building funds under the Rule 20A Plan with Pacific Gas and Electric Company (PG&E). As the account builds with a small fee charged to users in our jurisdiction, we become eligible for a new underground district. The account has slightly over \$440,000 set aside.

**DISCUSSION:**

Staff has put together a tentative plan for the next under-grounding District. The Rule 20A guidelines require that we build on our existing districts from the downtown core and beyond.

Attached is mapping which indicates the three proposed new districts. In looking at these districts, Number 3 is the most expensive and Number 2 is the least expensive. Number 1 should be only slightly higher than Number 2; however final PG&E evaluation would need to be completed

Council made a priority of project as follows, further Permitting

- 1) Broad Street
- 2) Sacramento Street
- 3) Coyote Street

Attachments



## **RESOLUTION 2009-XX**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEVADA CITY SPECIFYING CONVERSION DISTRICTS FOR UNDERGROUNDING OVERHEAD ELECTRIC AND TELECOMMUNICATION DISTRIBUTION AND SERVICE FACILITIES**

**WHEREAS**, the California Public Utilities Commission (CPUC) has authorized electric and telecommunication utilities to convert overhead utility lines and facilities to underground pursuant to Electric Rule 20 and Telecommunication Rule 32, and

**WHEREAS**, pursuant to certain criteria, CPUC rules allow participating cities to establish legislation authorizing the creation of underground utility districts within which existing overhead electric distribution and telecommunication distribution and service facilities will be converted to underground, and

**WHEREAS**, the City of NEVADA CITY, has adopted an ordinance authorizing the City Council to designate areas within which all existing overhead poles, overhead wires and overhead equipment associated with the distribution of electric power, telecommunication services and cable television should be removed and replaced with underground wires and facilities: and

**WHEREAS**, the Director of Public Works and/or City Engineer of the City of NEVADA CITY has consulted with the affected public utilities and such utilities have agreed that the proposed underground conversion district, designated the NEVADA CITY Overhead Utility Conversion District and more particularly described in Exhibit 1 attached here to and incorporated herein by reference, meets the criteria established by the rules of the CPUC, to wit,

[that such under grounding will avoid or eliminate the unusually heavy concentration of overhead electric facilities, AND/OR]

[that the streets or roads or right-of-ways in the proposed district are extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic, AND/OR]

[that the streets or roads or right-of-ways in the proposed district adjoins or passes through a civic area or public recreation area or an area in the Historical District to the general public, AND/OR]

[that the streets or roads or right-of-ways in the proposed district are designated arterial streets or major collectors as defined in the Governor's Office of Planning and Research General Plan Guidelines and identified in the adopted General Plan of the City of NEVADA CITY,] and



**WHEREAS**, each year the City of NEVADA CITY is notified by PG&E regarding the allocation of work credits for conversion of overhead electric and distribution lines and facilities to underground, known as Rule 20A allocations, and

**WHEREAS**, the Director of Public Works and/or City Engineer of the City of NEVADA CITY has consulted with PG&E and determined that the City has accumulated Rule 20A work credits or PG&E has agreed that the City may borrow against future credits sufficient to complete the proposed overhead conversion project, and

**WHEREAS**, the City of NEVADA CITY and the affected utilities have agreed by letter that each utility shall complete the engineering of the respective portion of the NEVADA CITY Overhead Utility Conversion Project, and

**WHEREAS**, the City of NEVADA CITY and the affected utilities have agrees by letter that PARTY shall be responsible for preparation of the trench profile and composite drawings and the PARTY shall be designated as "trench lead" to manage trenching, installation of substructures, and pavement restoration and such other work, and

**WHEREAS**, the Director of Public Works and/or City Engineer of the City of NEVADA CITY and the affected utilities have agreed on a work schedule which meets their respective capabilities and further agree to waive any administrative fees, costs or special street restoration requirements for purposes of this project, and

**WHEREAS**, to the extent required, the City of NEVADA CITY has agreed to provide easements or rights of way on private property as may be necessary for installation of utility facilities in a for satisfactory to the affected utilities, and

**WHEREAS**, the City Council of the City of NEVADA CITY has now received the report from the Director of Public Works and/or City Engineer recommending that the area identified in Exhibit 1 should be designated as a overhead utility conversion area within which all existing overhead poles, overhead wires and overhead equipment associated with the distribution of electric power, telecommunication services and cable television should be removed and replaced with underground wires and facilities; and

**WHEREAS**, upon the recommendation of the Director of Public Works and/or City Engineer, the City Council of the City of NEVADA CITY has determined that the proposed NEVADA CITY Overhead Utility Conversion District is categorically exempt from environmental review pursuant to the California Environment Quality Act, and



**WHEREAS**, the City of NEVADA CITY has notified all affected property owners within the proposed NEVADA CITY Overhead Utility Conversion District and inviting same to attend a public hearing to discuss formation of the proposed district, and

**WHEREAS**, the City Council of the City of Nevada City held public hearings at which time the Council did not receive and consider the recommendation of the City Engineer and did hear any and all objections or protests that were raised by designating this area an overhead utility conversion district;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of NEVADA CITY that:

Section 1. The public interest requires the removal of all existing utility poles [excepting those poles supporting streetlights, traffic signals or trolley lines], overhead wires and associated overhead structures and installation of underground wires and facilities for supplying electric power, communication, or similar associated services within that areas as shown in Exhibit 1, attached hereto, with such area being designated as the NEVADA CITY Overhead Utility Conversion District, and

Section 2. That the utility companies, cable television services and other affected services shall commence work on installation of underground facility installation in NEVADA CITY District and that as each phase of the project is complete and ready for conversion from overhead to underground utility facilities, all fronting property owners shall be notified by first class letter, postage pre-paid, of the schedule for conversion of all utility service lines, and

Section 3. The electric utility shall USE the underground conversion allocation computed pursuant to decisions of the California Public Utilities Commission for the purpose of providing to each premises requiring it in NEVADA CITY District a maximum of one hundred feet of individual electric service trenching and conductor (as well as back fill, paving and conduit, if required) and each other serving utility shall provide service trenching and conductor in accordance with its rules and tariffs on file with the California Public Utilities Commission or as required by its Franchise Agreement with the City of NEVADA CITY, and

Section 4. The Electric utility shall USE said underground conversion allowance allocation, up to a maximum amount of \$1500 per service entrance excluding permit fees, for the conversion of electric service panels to accept underground service in the NEVADA CITY Overhead Utility Conversion District, and [EACH PROPERTY OWNER/THE CITY OF NEVADA CITY] shall be financially responsible for any and all costs not covered by the electric utility for the





installation and maintenance of the conduit and termination box located on, under or within any structure on the premises served, and

Section. 5 That upon notification as specified in Section 2, all property owners in NEVADA CITY Overhead Utility Conversion District shall have underground electrical entrance facilities installed and inspected pursuant to the City of NEVADA CITY Electrical Code within sixty (60) days and that should any property owner fail to install satisfactory underground electrical entrance facilities by the date specified in the notice, the electric utility shall notify the Director of Public Works who shall, within thirty (30) days direct the electric utility in writing to discontinue electrical service to the property, without recourse, pursuant to Rule 11 until electrical entrance facilities are ready to accept underground electrical conductors and have passed the necessary inspection requirements, and

Section 6. That once all services have been converted from overhead to underground, the utility companies, cable television services and other affected services shall remove all poles (except as specified above) and associated overhead facilities in NEVADA CITY Overhead Utilities Conversion District, within ninety (90) days.

The foregoing resolution was adopted by the City Council of the City of Nevada City, California, on \_\_\_\_\_ by the following votes:

AYES:

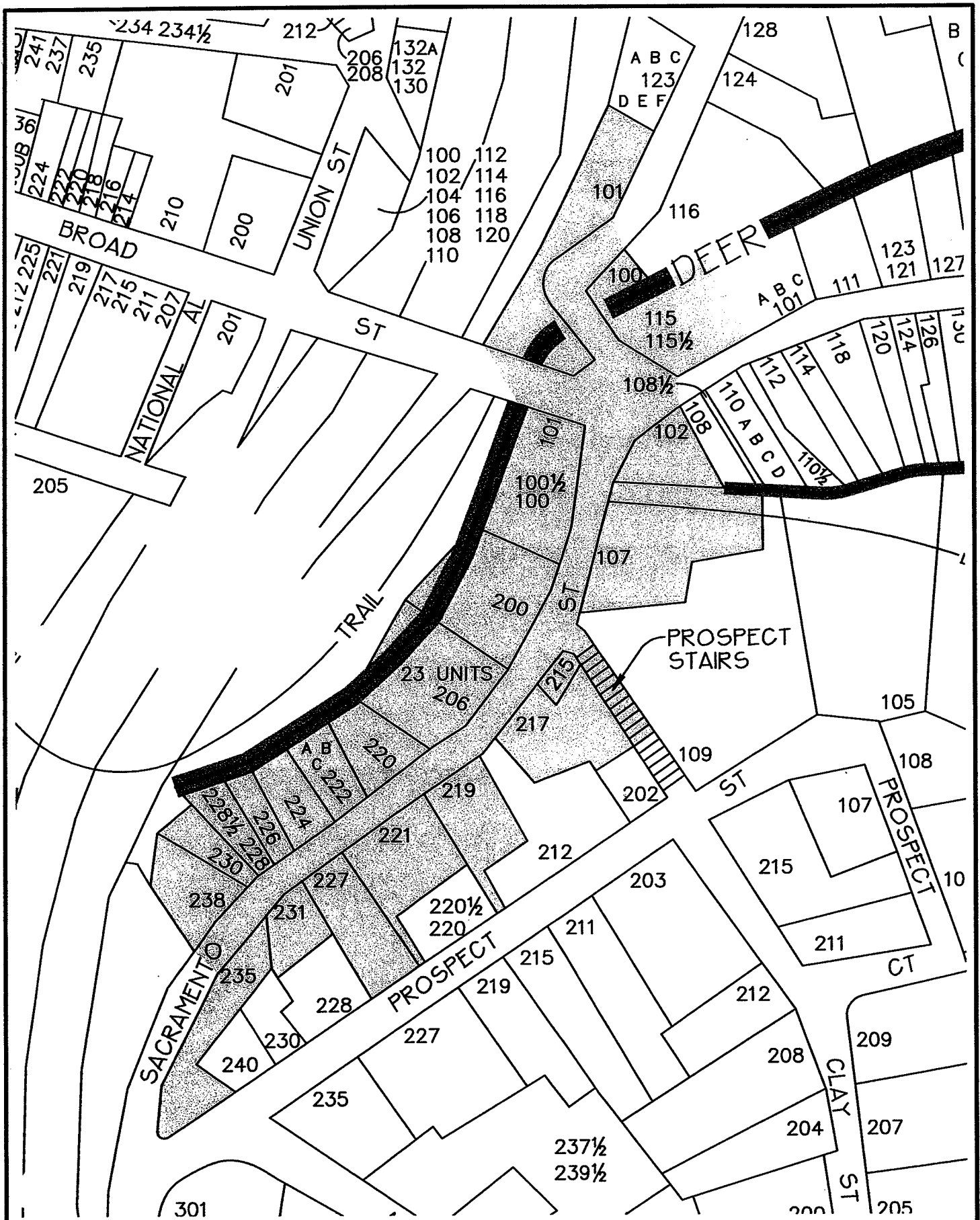
NOES:

ABSTAIN:



\_\_\_\_\_  
Neil Locke, City Clerk



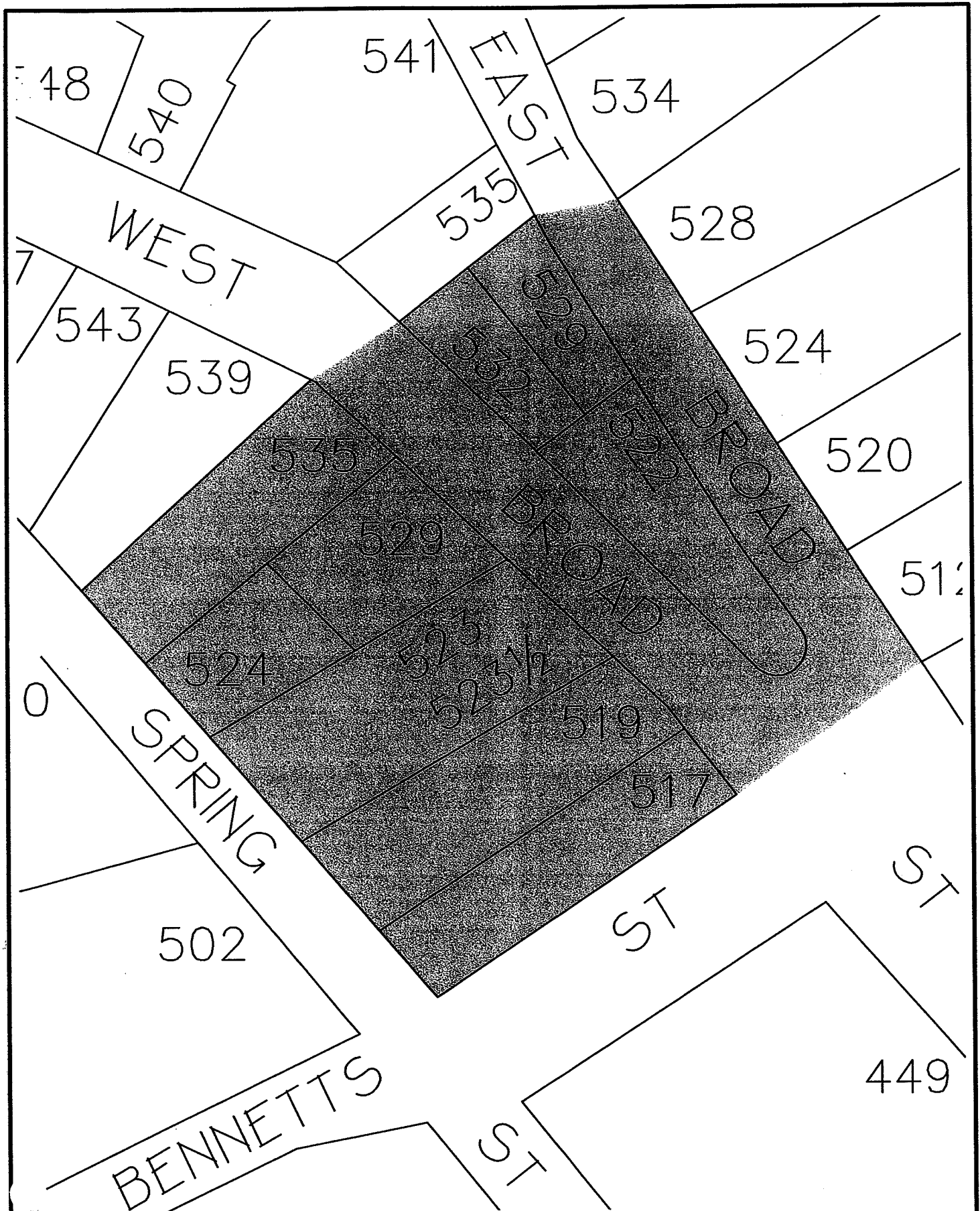


January  
2009

Nevada City  
Underground Utility District

District 1  
2





January  
2009

Nevada City  
Underground Utility District

District 3  
1











RECEIVED

AUG 24 2009

City of Nevada City

August 19, 2009

City of Nevada City  
317 Broad Street  
Nevada City, CA 95959

Subject: 2009 Rule 20A Allocation & Work Credit Status

Dear City Manager,

The purpose of this letter is to update you on your community's Rule 20A Electric Underground Work Credit Balance. The table below shows your Rule 20A Work Credit Balance as of June 30, 2009. This balance reflects closed projects and amounts committed for projects with an underground conversion resolution adopted prior to June 30, 2009.

<u>Work Credit Status</u>	
<b>Account Balance as of 07/01/2008</b>	<b>\$402,287</b>
Projects Closed (7/1/08 through 12/31/08)	\$ 0
<b>Account Balance as of 12/31/2008</b>	<b>\$402,287</b>
2009 Allocation	\$36,052
Adjustment	\$ 0
<b>Account Balance as of 01/01/2009</b>	<b>\$438,339</b>
Committed Amounts	\$ 0
<b>Adjusted Balance as of 06/30/2009</b>	<b>\$438,339</b>

Expressed in dollars, the amounts listed above represent the value of work credits that apply only to qualified, public interest underground conversion projects pursuant to Rule 20A. However, notwithstanding the limitations on Rule 20A projects, these work credits may also be used as collateral to begin a Rule 20B neighborhood underground project design. If citizens in your community are interested in discussing a possible Rule 20B, please contact me for more information.

As with all major capital projects, when your community passes a resolution approving an underground district, it is categorized with other Rule 20A projects in the queue. At a company level, the actual budget and resources to do this work is prioritized with all other PG&E work. PG&E's first priority is maintaining overall electric system reliability to serve our customers. For example, customer service reliability projects receive higher priority and include repairing damaged lines and poles caused by storms, upgrading the electric capacity of the system, and connecting new customers. This means that while your underground project is important, we may not immediately be able to begin work after you have passed a resolution. For this reason, advance project planning is important. Also, Rule 20A underground conversion projects are complex, involving coordination with the community, PG&E, and other utilities, and includes complicated engineering to ensure that existing overhead systems remain operable until the moment of cut-over. Again, advance planning with the community and all affected utilities is critical to success.

PG&E values its partnership with the communities and we look forward to developing a plan that works for both of us. If you have any questions regarding your Rule 20A Work Credit Status, or if your community wants to discuss pending Rule 20A projects or potential future projects, please contact me at 707.577.7101.

Sincerely,

SINDY MIKKELSEN  
Principal Program Manager - Rule 20A Program

cc: Public Works Director

